it is clear that once the locked box containing the opium was found in the possession of the respondent, he was until the contrary was proved to be deemed to have been in possession of its contents and to have known the nature of these contents. The President was therefore wrong in holding at the close of the prosecution case that the evidence for the prosecution did not make out a *prima facie* case on these two points. Without the aid of the provision which has been quoted it did not make out such a case, but with its aid it clearly did.

Before departing from the case I would reiterate a warning I have given on previous occasions that when Singapore authorities on the construction of Singapore Ordinances are quoted, they should be carefully scrutinised to ascertain whether the portion of the Singapore Ordinance in question is the same as the corresponding portion of the corresponding Federation Ordinance. If the two portions are the same, then, in the absence of any local decision to the contrary, any decision of the Singapore Courts can safely be followed. If the portions are different, then any decision of the Singapore Courts should be studied with very great care lest it should turn not on a point on which the two Ordinances correspond but on a point on which they differ. Had such a course been followed in the present case, it would have been clear that the Singapore case which was relied on depended solely on a point on which the two Ordinances differed and it would therefore have been properly disregarded.

Order accordingly.

COMPTROLLER OF INCOME TAX
v.
HARRISONS & CROSFIELD (MALAYA) LTD.

[C. A. (Mathew, C.J. (F.M.), Murray-Aynsley, C.J. (S.) Bellamy, J.) December 1, 1953]

[K.L. — F.M. Civil Appeal No. 9 of 1953]

Income Tax Ordinance, 1947, s. 39 — Right of appeal to Board of Review — Power of the Board to exercise discretion (if any) vested in the Comptroller.

This was an appeal against the judgment of Wilson, J. reported in (1953) M.L.J. 45. In this appeal the following 3 questions came for the determination of the Court:

(1) Does the proviso to section 39 of the Income Tax Ordinance, 1947 as amended by the Income Tax (Amendment) Ordinance, 1951 vest in the Comptroller an absolute and uncontrolled discretion to reduce or remit the rate of tax or to leave the rate of tax unaltered?

(2) Is there any right of appeal to the Board of Review if the Comptroller refuses to act under the said proviso?

(3) Has the Board of Review power to exercise on appeal the discretion (if any) vested in the Comptroller under the said proviso?

Held: (1) in the particular circumstances set out in the proviso to section 39, the Comptroller cannot leave the rate of tax unaltered and is bound either to charge at a lower rate (namely twenty per centum) or at no rate in his discretion; (2) there is clearly a right of appeal to the Board of Review under section 75(1) of the Ordinance; and (3) by section 76(10) of the Ordinance, the Board clearly was acting in the exercise of powers conferred by this subsection, and the Board were right in so acting.

Cases referred to:—

(1) *Julius v. Lord Bishop of Oxford* 5 A.C. 214.

(2) *York and Morth Midland Railway Co. v. The Queen* El. & Bl. 858.

(3) *In re Bridgman* 29 L.J. (Ch.) 844.

(4) *Re Newport Bridge* 2 El. & Ed. 377.

(5) *Ex parte Sidebotham, Re Sidebotham* 14 Ch. 458.

CIVIL APPEAL.

D. B. W. Good (Senior Federal Counsel) for the appellant.

F. J. Woodward for the respondents.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Mathew, C.J.: — At the close of the arguments the Court unanimously dismissed this appeal, and we now proceed to give our reasons for the judgment.

This is an appeal under the Income Tax Ordinance, 1947 from the judgment of Wilson, J., dated 11th February, 1953, in which he dismissed the appeal of the Comptroller of Income Tax from the decision of the Board of Review in which the Board held that the Comptroller had erred in his decision not to charge the taxpayer, Harrisons & Crosfield (Malaya) Limited (hereinafter called "the Company"), with tax at a lower rate than thirty per centum, namely, twenty per centum, on every dollar of the amount equal to the dividends which the Company had paid in 1950 out of its chargeable income for the year of assessment 1951 (under the proviso to section 39 of the Income Tax Ordinance, 1947 as amended by the Income Tax (Amendment) Ordinance, 1951) and ordered that the assessment of the Company be amended accordingly.

The material facts may be summarised as follows: The Company is a company incorporated in Singapore and has a place of business at No. 96 Ampang Road, Kuala Lumpur in the Federation of Malaya. On 18th November, 1950 the Company declared a gross dividend of $533,333 on a declared net profit of $973,226 in

respect of its trading year ended 30th June, 1950. After deduction of $106,666 in respect of income tax at the rate then payable by the Company of twenty per centum, the Company paid to its shareholders a net dividend of $426,667. The Company computed its chargeable income for the year of assessment 1951 by reference to the income for its trading year ended 30th June, 1950 and furnished the Comptroller with a return of its income at the figure of $1,320,963 (which included the said declared net profits of $973,226). On 5th February, 1952 the Comptroller determined the amount of the chargeable income of the Company for the year of assessment 1951 on the basis of its income for the year ended 30th June, 1950 at the figure of $1,323,155, and on 9th February, 1952 he assessed the Company to tax at the figure of $396,840.75. The Company disputed the assessment and by notice of objection dated 27th February, 1952 applied to the Comptroller to review and to revise the assessment made upon it on the grounds that in November 1950 the Company had paid to its shareholders dividends amounting to $533,333 out of such chargeable income, that from the amount of such dividends the Company had deducted tax at the rate of twenty per centum on every dollar so paid (under section 40 of the Income Tax Ordinance, 1947), that the rate of tax upon companies at that date was twenty per centum, and that an amount equal to such dividends had now been charged by the Comptroller at the rate of thirty per centum. On 1st March, 1952 the Comptroller agreed that the amount of tax in dispute was $53,333.30 and at his request, on 6th March, 1952, the Company paid the amount of tax not in dispute, namely, $343,507.45. On 14th March, 1952 the Comptroller gave notice to the Company of his refusal to amend the assessment as desired, and consequently, on 20th March 1952, the Company appealed to a Board of Review. The Board allowed the claim of the Company that it was entitled to be assessed on the amount paid in dividends in 1950 at the rate of twenty per centum and made an order amending the assessment accordingly.

Section 39 of the Income Tax Ordinance, 1947 as amended by the Income Tax (Amendment) Ordinance, 1951 enacts, omitting words which for the present purpose are immaterial:—

> 39. "Subject to the provisions of section 36 of this Ordinance, there shall be levied and paid for each year of assessment upon the chargeable income of—
>
> (a) every company, tax at the rate of thirty per centum on every dollar of the chargeable income thereof;
>
> .....
>
> Provided that where any company proves to the satisfaction of the Comptroller that any dividends have been paid out of such chargeable income.... .....an amount equal to such dividends in the case of a company..... .....may be charged at a lower rate or not charged with any tax as the Comptroller shall determine."

Section 36 is inapplicable and need not be set out.

The reason on which the Comptroller had founded his decision not to amend the assessment of the Company was that he was not satisfied that the dividends which had been paid by the Company in 1950 were paid out of the chargeable income of the Company for 1951. This point was raised, and fully argued, in the course of the appeal before the Board which held that the dividends paid in 1950 were paid out of the chargeable income of the Company for the year of assessment 1951. The point was considered by Wilson, J., who agreed with the finding of the Board. The learned judge, in the course of his judgment, said:—

> "In view of these definitions ('chargeable income' 'assessable income,' and 'statutory income') I am of opinion that the Committee of the Board were right in finding that assessable income after the deductions allowed in section 34 becomes chargeable income for the purposes of section 39 of the Ordinance and that the chargeable income of the respondents for the year of assessment 1951 was the statutory income of the trading year 1950."

We think that the learned judge's view on this point was clearly right, and inasmuch as no argument to the contrary was presented to this Court we need not consider it further.

As a result of concessions made in the course of the hearing by Counsel for the appellant, we are left to determine three questions:—

> (1) Does the proviso to section 39 of the Income Tax Ordinance, 1947 as amended by the Income Tax (Amendment) Ordinance, 1951 vest in the Comptroller an absolute and uncontrolled discretion to reduce or remit the rate of tax or to leave the rate of tax unaltered?
>
> (2) Is there any right of appeal to the Board of Review if the Comptroller refuses to act under the said proviso?
>
> (3) Has the Board of Review power to exercise on appeal the discretion (if any) vested in the Comptroller under the said proviso?

We proceed to consider these questions *seriatim*.

As to the first question, Counsel for the appellant contended that the language of the proviso to section 39 of the Ordinance is permissive only, and that while the words employed therein indubitably conferred on the Comptroller the power, in the particular circumstances set out in the proviso, either to charge tax at a lower rate (than thirty per centum) or not to charge any tax, they did not bind him to exercise that power. It was argued that in *Julius v. Lord Bishop of Oxford*[1] the words "it shall be lawful" were construed as being permissive and enabling only, and that the decision in that case applies in the present case.

We cannot accept this contention in its entirety. There is no doubt that there is a long line of cases indicating that words such as these, in enactments of a certain class, have been construed as importing permission, not obligation: see *York and North Midland Railway Co. v. The Queen*[2]; *In re Bridgman*[3]; and *Re Newport Bridge*[4]. But there is an equally long line of cases where the Courts decided that "although the statute in terms had only conferred a power, the circumstances were such as to create a duty": see the cases conveniently set out in the speech of Lord Cairns, L.C., for *Julius v. Lord Bishop of Oxford* (*Ibid.* p. 223 *et seq.*). Lord Cairns very clearly states what these cases decided in these words (*ibid.* p. 225):—

"……where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised."

Lord Selborne dealt with the point in these words (*ibid.* p. 235):—

"The language, (certainly found in authorities entitled to very high respect) which speaks of the words 'it shall be lawful', and the like, when used in public statutes, as ambiguous, and susceptible (according to certain rules of construction) of a discretionary or an obligatory sense, is in my opinion inaccurate. I agree with my noble and learned friends who have preceded me, that the meaning of such words is the same, whether there is or is not a duty or obligation to use the power which they confer. They are potential, and never (in themselves) significant of any obligation. The question whether a Judge, or a public officer, to whom a power is given by such words, is bound to use it upon any particular occasion, or in any particular manner, must be solved aliunde, and, in general, it is to be solved from the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power."

To this should be added Lord Blackburn's statement of the law in the same case (*ibid.* p. 244):—

"The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right."

The relevant words of the proviso to section 39 of the Income Tax Ordinance, 1947 as amended by the Income Tax (Amendment) Ordinance, 1951 — "an amount equal to such dividends in the case of a company ..... may be charged at a lower rate or not charged with any tax as the Comptroller shall determine" — appear straightforward enough and are not difficult to construe. It is important to bear in mind in construing the words "may be charged at a lower rate or not charged with any tax as the Comptroller shall determine" that the Legislature has thought fit to use in the same short phrase the words "may" and "shall". It is further to be observed that under the Income Tax Ordinance the only officer empowered to determine the rate of tax — and in certain instances directed to do so (for example, see section 43) — is the Comptroller. Giving effect to all the words used in the phrase "may be charged at a lower rate or not charged with any tax as the Comptroller shall determine" we think it is crystal clear that whether a company shall be charged at a lower rate or not charged with any tax is discretionary, and that in order to define the power given to the Comptroller to charge either at a lower rate or not to charge any tax at all, the Legislature has expressly used the word "may". But once the Comptroller has exercised that discretion, he is bound to give effect to it, and therefore the word "shall" is used. In our judgment once a company proves to the satisfaction of the Comptroller that any dividends have been paid out of its chargeable income, such a company has a legal right to be assessed on the amount equal to such dividends either at a lower rate of tax or at no rate; it is for the Comptroller, in the exercise of the discretion vested in him, to determine the rate of tax (either a lower rate or no rate) and, having done so, he is bound to give effect to it. There is nothing in this reasoning which clashes with the reasoning in *Julius v. Lord Bishop of Oxford*[1]. The primary object of the proviso to section 39 of the Ordinance, one would think, is that a company should have a reduction of tax in the circumstances of the present case, and it cannot be said that the Legislature intended that the company should be deprived of this benefit by the act of the Comptroller for whose benefit the proviso was not inserted. The conclusion, therefore, at which we arrive is that the answer to the first question is that the Comptroller, in the particular circumstances set out in the proviso to section 39, cannot leave the rate of tax unaltered and is bound either to charge at a lower rate (namely, twenty per centum) or at no rate in his discretion.

This being our view it follows that the answer to the second question is in the affirmative. *Prima facie*, a company which has been assessed to tax at a figure greater than the law allows and has applied to the Comptroller to review and to revise the assessment and the Comptroller refuses to do so is, one would think, in common parlance, "a person aggrieved". In *Ex parte Sidebotham, Re Sidebotham*[5] James, L.J., said at page 465:—

"But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

We think that the Company in the present case can be said to come within that definition, and in our opinion clearly has a right of appeal to the Board of Review under section 75(1) of the Ordinance.

It only remains to consider the third, and last, question. No argument was addressed to us on this point. We think that the answer to this question is to be found in sub-section (10) of section 76 of the Ordinance. That sub-section reads :—

"The Board may, after hearing an appeal, confirm, reduce, increase or annul the assessment or make such order thereon as to it may seem fit."

In ordering that "tht assessment be adjusted so as to charge at 20% an amount equal to the amount of the dividends paid in 1950" the Board was clearly acting in the exercise of powers conferred by this sub-section, and we think that the Board were right in so acting.

For these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors for the respondents : *Bannon & Bailey.*

ABDUL KARIM v. REGINA; SUNDRA SINGH v. REGINA; LOH KAI HOI v. REGINA.

[A. Cr. J. (Brown, Ag. C.J.) February 2, 1954]

[Singapore — Magistrate's Appeals Nos. 218, 229 and 231 of 1953]

Road Traffic Ordinance, 1941, s. 27(1) — Driving under the influence of drink — Sentence of imprisonment for a first offence — Facts of each to be considered in passing sentence.

In each of the above cases, the respective appellant was sentenced to three months' imprisonment on charge of driving under the influence of drink. The learned Magistrate in his grounds of decision said he took a serious view of this type of offence.

Held: (1) in considering whether a prison sentence should be imposed in the case of a first offender the facts of the case must be carefully considered and the gravity assessed according to the "yard stick" afforded by the legislature in providing a maximum of four months' imprisonment for a first offence; (2) any tendency to standardise punishment for any type of offence is to be deplored because it means that the individual offender is being punished not on the facts of his particular case but because he has committed an offence of this type.

Cases referred to :—

(1) *James William Howell* 32 Cr. App. R. 173.

(2) *Thompson v. Knight* (1947) 1 K.B. 336.

MAGISTRATE'S APPEALS.

David Marshall for appellant Abdul Karim.

D. G. Osborne Jones for appellant Sundra Singh.

L. Rayner for appellant Loh Kai Hoi.

Cur. Adv. Vult.

Brown, Ag. C.J. : — These three appeals were heard on the same day, and it will be convenient to deal with them together. In each case the appellant was convicted *inter alia* of driving under the influence of drink, contrary to section 27(1) of the Road Traffic Ordinance, 1941. In each case the appellant was sentenced to 3 months imprisonment on that charge. Each case had been tried by the same Magistrate and in each case the learned Magistrate had expressed, in his Grounds of Decision, the serious view which he took of this type of offence. In each case I upheld the convictions but the sentences of imprisonment were quashed and fines were substituted.

In the matter of punishment, the "type of offence" is the concern of the Legislature, which has provided the maximum punishment which can be inflicted for a serious offence of that type. The particular offence, and the particular offender, are the concern of the Court, whose business it is to decide what punishment is merited upon the facts of the individual case within the limits which the Legislature has provided. Any tendency to standardise punishment for any type of offence is to be deplored because it means that the individual offender is being punished not upon the facts of his particular case but because he has committed an offence of that type. This tendency is particularly to be resisted in imposing punishment for an offence for which the Legislature has not left a wide field of discretion to the Court. For the offence which I am considering (unlike the offences, for example, of robbery or rape) the Legislature has limited the Court's discretion to a fine of $500 or 4 months' imprisonment for a first offence.

It is right that I should say that the learned Magistrate, when he tried these three cases, had not had the advantage of seeing the judgments of Taylor, J. in Magistrate's Appeals No. 225 of 1953 (*Lindsay*) and No. 176 of 1953 (*Perera*). In both those cases the appellant was a first offender and had been sentenced to 3 months imprisonment. In the former case the learned Judge quashed the sentence of imprisonment and substituted the maximum fine. In the latter case he reduced the sentence of imprisonment to one month. In the latter case the evidence of the appellant's condition was that he was too drunk to make a statement at the Police Station and that bail had to be refused because he was incapable of establishing his identity. I respectfully agree with both those decisions. The latter was, in my opinion, a proper case for imprisonment, and it was on account of the appellant's circumstances